

93<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 12004

---

## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 18, 1973

Mr. MOORHEAD of Pennsylvania (for himself, Ms. ABZUG, Mr. ALEXANDER, Mr. BADILLO, Mr. BINGHAM, Mr. BROWN of California, Mrs. COLLINS of Illinois, Mr. COTTER, Mr. DELLUMS, Mr. FASCELL, Mr. HARRINGTON, Mr. HICKS, Mr. HOWARD, Mr. KOCH, Mr. LEGGETT, Mr. MATSUNAGA, Mr. MAZZOLI, Mrs. MINK, Mr. MOSS, Mr. REES, Mr. ROSENTHAL, Mrs. SCHROEDER, Mr. SEIBERLING, Mr. THOMPSON of New Jersey, and Mr. THONE) introduced the following bill; which was referred to the Committee on Government Operations

---

## A BILL

To amend section 552 of title 5 of the United States Code (known as the Freedom of Information Act) to provide for the classification and declassification of official information in the interest of national defense.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       SECTION 1. This Act may be cited as the "Freedom of  
4       Information Act Security Classification Amendments of  
5       1973".

6       SEC. 2. Section 552 (d) of title 5, United States Code, is  
7       amended by inserting at the end thereof the following new  
8       paragraph:

1       “(2) If any matter falls within paragraph (1) and is  
2   classified under subsection (d) as Top Secret, Secret, or Con-  
3   fidential and is subsequently declassified under subsection  
4   (e), then subsection (a) applies to such matter.”

5       Sec. 3. Section 552 of title 5, United States Code, is  
6   further amended by adding at the end thereof the following  
7   new subsections:

8       “(d) (1) *Official information* may, in the interest of  
9   national defense, be classified as—

10           “(i) Top Secret;

11           “(ii) Secret; or

12           “(iii) Confidential;

13   by the appropriate agencies as described in subparagraph  
14   (A) of paragraph (2). Such classified information shall be  
15   known as national defense information. Official information  
16   may be classified as Top Secret only if its unauthorized dis-  
17   closure could cause exceptionally grave damage to the na-  
18   tional defense of the United States. Official information may  
19   be classified as Secret only if its unauthorized disclosure could  
20   cause serious damage to the national defense of the United  
21   States. Official information may be classified as Confidential  
22   only if its unauthorized disclosure could cause damage to the  
23   national defense of the United States.

24       “(2) (A) (i) Official information may be originally  
25   classified as Top Secret by the following agencies: the De-

1 partment of State, the Department of Defense, the Depart-  
2 ment of the Army, the Department of the Navy, the Depart-  
3 ment of the Air Force, the Central Intelligence Agency, the  
4 Atomic Energy Commission, and by such offices within the  
5 Executive Office of the President as the President may des-  
6 ignate by Executive order.

7 “ (ii) Official information may be originally classified as  
8 Secret by any agency which may originally classify official  
9 information as Top Secret and by the Department of the  
10 Treasury, the Department of Justice, and the Department  
11 of Transportation.

12 “ (iii) Official information may be originally classified  
13 as Confidential by any agency which may originally classify  
14 official information as Top Secret or Secret and by the De-  
15 partment of Commerce and the National Aeronautics and  
16 Space Administration.

17 “ (B) (i) Within the agencies described in subparagraph  
18 (A), the classification, in the interest of national defense,  
19 of official information may only be done by the head of each  
20 such agency, and such other senior principal deputies, assist-  
21 ants, and subordinate officials within each such agency who  
22 are designated in writing by the head of each such agency.  
23 However, subordinate supervisory officials below the level  
24 of section chief or its equivalent may not be designated to  
25 classify official information as Top Secret, Secret, or Confi-

1   dential. Nor may any individual be designated to classify  
2   such information unless his day-to-day operational responsi-  
3   bilities make it imperative that he have such authority. The  
4   head of each such agency shall semiannually review each  
5   individual whom he has designated in writing as having  
6   authority to classify official information in order to take away  
7   such authority from any individual whose operational re-  
8   sponsibilities no longer make it imperative that he have such  
9   authority.

10       “(ii) Individuals who are designated in writing by the  
11   head of an agency pursuant to clause (i) as having authority  
12   to classify official information may not redelegate such au-  
13   thority to any other individual.

14       “(3) (A) Except as otherwise provided by statute, the  
15   head of each agency described in subparagraph (A) of para-  
16   graph (2) shall compile and maintain a full and complete  
17   list of the names and addresses of all individuals within such  
18   agency who have the authority to classify official informa-  
19   tion as Top Secret, Secret, or Confidential, including a break-  
20   down identifying individuals who have the authority to  
21   classify official information into each such category. A copy  
22   of such list shall be submitted by each such head quarterly  
23   to the Classification Review Commission. A copy of each  
24   such list shall also be made available, upon written request  
25   to the appropriate agency head by any committee of Congress

5

1 or by the Comptroller General of the United States, to such  
2 committee or the Comptroller General.

3 “(B) Any individual who, acting in a clerical capacity,  
4 handles any classified information need not have authority  
5 to classify official information pursuant to subparagraph (A)  
6 in order to put markings on material containing any such  
7 information to identify its category of classification.

8 “(4) No agency other than an agency described in sub-  
9 paragraph (A) of paragraph (2) may, in the interest of  
10 national defense, classify official information, and no such  
11 authority may be delegated to any other agency except by  
12 statute.

13 “(5) (A) The classification of official information shall  
14 be strictly based upon the definitions of Top Secret, Secret,  
15 and Confidential, as defined in paragraph (1).

16 “(B) Each individual who has the authority pursuant  
17 to paragraph (2) (B) (i) to classify official information as  
18 Top Secret, Secret, or Confidential shall be held accountable,  
19 under regulations prescribed by the Commission, for his  
20 failure to accurately classify such information.

21 “(C) Such individuals shall not classify official infor-  
22 mation in order to conceal incompetence, inefficiency, wrong-  
23 doing, administrative error, to avoid embarrassment to any  
24 individual or agency, to restrain competition or independ-  
25 ent initiative, or to prevent or delay for any reason the re-

1 lease of official information in violation of subsection (c).  
2 Any such individual who classifies official information in  
3 violation of this subparagraph shall be subject to adminis-  
4 trative reprimand, including suspension or such other disci-  
5 plinary action as shall be prescribed under regulations of  
6 the Commission.

7 “(D) Classified information furnished to the United  
8 States by a foreign government or international organization  
9 shall be classified by an appropriate agency described in  
10 subparagraph (A) of paragraph (2) as Top Secret, Secret,  
11 or Confidential, depending upon its category of classification  
12 by such foreign government or international organization.  
13 However, the provision of such information to any appro-  
14 priate committee of Congress shall not be denied, upon the  
15 written request of such committee to the appropriate agency.

16 “(c) (1) (A) Whenever—

17 “(i) any official information which has been classi-  
18 fied on or after the effective date of the Freedom of  
19 Information Act Security Classification Amendments of  
20 1973 pursuant to subsection (d) as Top Secret, Secret,  
21 or Confidential; and

22 “(ii) such information no longer satisfies the cri-  
23 terion (as described in subsection (d) (1)) for classi-  
24 fication in such category;

25 then such information shall be promptly downgraded to an

1 appropriate less stringent category or declassified by an indi-  
2 vidual within the agency concerned who has authority to  
3 classify such information.

4 “(B) Except as provided by paragraph (3) —

5 “(i) any official information which is originally  
6 classified pursuant to subsection (d) as Top Secret,  
7 Secret, or Confidential on or after the effective date of  
8 the Freedom of Information Act Security Classification  
9 Amendments of 1973; and

10 “(ii) any official information which was originally  
11 classified, in the interest of national defense, as Top Se-  
12 cret, Secret, or Confidential during the fifteen-year period  
13 immediately preceding the effective date of the Freedom  
14 of Information Act Security Classification Amendments  
15 of 1973 pursuant to any Executive order and which is  
16 classified as Top Secret, Secret, or Confidential on such  
17 effective date;

18 shall be downgraded or declassified, as the case may be, by  
19 an individual within the agency concerned who has the au-  
20 thority to classify such information according to the schedule  
21 in paragraph (2).

22 “(C) Except as provided by paragraph (3), any official  
23 information which was originally classified, in the interest  
24 of national defense, prior to the fifteen-year period imme-  
25 diately preceding the effective date of the Freedom of In-

1 formation Act Security Classification Amendments of 1973  
2 pursuant to any Executive order, directive, memoranda, or  
3 other authority and which is classified as Top Secret, Secret,  
4 or Confidential on such effective date shall be automatically  
5 declassified by an individual within the agency concerned  
6 who has the authority to classify such information within six  
7 months after the effective date of the Freedom of Informa-  
8 tion Act Security Classification Amendments of 1973.

9       “(2) Official information which is classified as Top  
10 Secret, Secret, or Confidential and which is described in sub-  
11 paragraph (B) of paragraph (1) shall be downgraded or  
12 declassified, as the case may be, by an individual within the  
13 agency concerned who has the authority to classify such  
14 information according to the following schedule:

15       “(A) (i) Official information classified as Top  
16 Secret and described in paragraph (1) (B) (i) shall be  
17 downgraded to Secret twelve months after the date of  
18 its original classification as Top Secret.

19       “(ii) Official information classified as Top Secret  
20 and described in paragraph (1) (B) (ii) shall be down-  
21 graded to Secret within twelve months after the effective  
22 date of the Freedom of Information Act Security Classifi-  
23 cation Amendments of 1973.

24       “(B) (i) Official information classified as Secret  
25 and described in paragraph (1) (B) (i) shall be down-



1       graded to Confidential twelve months after the date of  
2       its original classification as Secret.

3       “(ii) Official information classified as Secret and  
4       described in paragraph (1) (B) (ii) shall be down-  
5       graded to Confidential within twelve months after the  
6       effective date of the Freedom of Information Act  
7       Security Classification Amendments of 1973.

8       “(iii) Official information which is downgraded to  
9       the category of Secret pursuant to the provisions of para-  
10      graph (1) (A) or pursuant to the provisions of clause  
11      (i) or (ii) of subparagraph (A) of this paragraph  
12      shall be downgraded to the category of Confidential  
13      twelve months after the date of its downgrading to the  
14      category of Secret.

15      “(C) (i) Official information classified as Confiden-  
16      tial and described in paragraph (1) (B) (i) shall be de-  
17      classified twelve months after the date of its original  
18      classification as Confidential.

19      “(ii) Official information classified as Confidential  
20      and described in paragraph (1) (B) (ii) shall be de-  
21      classified within twelve months after the effective date  
22      of the Freedom of Information Act Security Classifica-  
23      tion Amendments of 1973.

24      “(iii) Official information which is downgraded to  
25      the category of Confidential pursuant to the provisions

1 of paragraph (1) (A) or pursuant to the provisions of  
2 clause (i), (ii), or (iii) of subparagraph (B) of this  
3 paragraph shall be declassified twelve months after the  
4 date of its downgrading to the category of Confidential.

5 “(3) Official information which is classified as Top  
6 Secret and which is described in subparagraph (B) or (C)  
7 of paragraph (1) shall not be downgraded to a less strin-  
8 gent category or declassified, other than in accordance with  
9 procedures described in paragraph (4), if such information—

10 “(A) is specifically exempted from disclosure by  
11 statute;

12 “(B) pertains to cryptographic systems;

13 “(C) would disclose intelligence sources or meth-  
14 ods; or

15 “(D) would disclose a defense plan, project, or  
16 other specific defense matter, the continuing protection  
17 of which is of vital importance to the United States  
18 and the unauthorized disclosure of which could cause  
19 exceptionally grave damage to the national defense of  
20 the United States.

21 “(4) (A) Official information which is classified as Top  
22 Secret, is described in subparagraph (B) or (C) of para-  
23 graph (1), and is within the purview of subparagraph (A),  
24 (B), (C), or (D) of paragraph (3) shall be downgraded  
25 to Secret by an individual within the agency concerned who

1 has the authority to classify such information twelve months  
2 after the date of its original classification as Top Secret  
3 in the case of information described in paragraph (1) (B)  
4 (i), and twelve months after the effective date of the  
5 Freedom of Information Act Security Classification Amend-  
6 ments of 1973 in the case of information described in  
7 paragraph (1) (B) (ii) or paragraph (1) (C). Immediately  
8 after its downgrading, such information shall be transmitted  
9 by the head of the agency concerned to the Chairman of the  
10 Classification Review Commission, established in subsection  
11 (f) of this section.

12 “(B) The Commission may, by a majority vote of its  
13 full membership, allow such information to continue to be  
14 classified as Secret for a period of twenty-four months be-  
15 ginning as of the date of the downgrading of such informa-  
16 tion by the agency concerned to Secret. Prior to the end of  
17 such twenty-four-month period, the Commission may, by a  
18 majority vote of its full membership allow such information  
19 to continue to be classified as Secret for a period of twelve  
20 months beginning as of the end of such twenty-four-month  
21 period. Prior to the end of such twelve-month period,  
22 the Commission may, by a two-thirds vote of its full  
23 membership, allow such information to continue to be  
24 classified as Secret for an additional twelve-month period  
25 beginning as of the end of the preceding twelve-month peri-

(2

1 od. At the end of this additional twelve-month period, such  
2 information shall be downgraded to Confidential by an in-  
3 dividual within the agency concerned who has the authority  
4 to classify such information, and twelve months after the  
5 date of its downgrading to Confidential, such information  
6 shall be declassified by any such individual. However, if prior  
7 to the end of such second twelve-month period the Presi-  
8 dent informs the Commission, in writing, of the detailed  
9 justification for the continued safeguarding of such informa-  
10 tion based upon national defense interests of the United  
11 States of the highest importance, then such information  
12 shall continue to be classified as Secret unless the Commis-  
13 sion, within fifteen calendar days of its receipt of the Presi-  
14 dent's written justification, by a two-thirds vote of its full  
15 membership, rejects such justification. If the Commission  
16 does not so vote to reject such justification, then such informa-  
17 tion shall continue to be classified as Secret until the Com-  
18 mission, by a two-thirds vote of its full membership, rejects  
19 such justification. If the Commission does so vote to reject  
20 such justification, then such information shall be downgraded  
21 to Confidential by an individual within the agency concerned  
22 who has the authority to classify such information, and  
23 twelve months after the date of its downgrading to Confi-  
24 dential, such information shall be declassified by any such  
25 individual.

1       “(C) If the Commission does not vote under subpara-  
2 graph (B) to allow any information within the purview of  
3 subparagraph (A) to continue to be classified as Secret  
4 for such twenty-four-month period or for the first or sec-  
5 ond twelve-month period described in subparagraph (B),  
6 then such information shall be downgraded to Confidential  
7 and thereafter declassified according to the schedule pro-  
8 vided under paragraph (3), except that if such information  
9 is described in subparagraph (C) of paragraph (1), then  
10 it shall be promptly declassified by an individual within the  
11 agency concerned who has authority to classify such  
12 information.

13       “(5) (A) Any official information which is down-  
14 graded or declassified under this subsection shall be marked  
15 as soon as practicable in order to clearly identify its new  
16 category of classification or the fact that it has been de-  
17 classified, the date of such downgrading or declassification,  
18 the name of the person who authorized such change, and  
19 the name of the individual who executed such change.

20       “(B) In cases where—

21           “(i) classified information has been transferred  
22 from one agency to another agency;

23           “(ii) the agency with originally classified such  
24 information has ceased to exist; or

1           “(iii) such information has been transferred to the  
2       General Services Administration in order to be placed  
3       in the Archives of the United States;  
4       the Commission shall prescribe regulations which delineate  
5       who shall have the authority to downgrade such information  
6       to a less stringent category and to declassify it.

7           “(f) (1) There is established a commission to be known  
8       as the Classification Review Commission (referred to in  
9       this section as the ‘Commission’).

10          “(2) (A) The Commission shall be composed of nine  
11       members who shall be appointed by the President by and  
12       with the advice and consent of the Senate. Of the nine  
13       members—

14               “(i) three shall be chosen from among individuals  
15       recommended by the Speaker of the House of Repre-  
16       sentatives; and

17               “(ii) three shall be chosen from among individuals  
18       recommended by the President pro tempore of the  
19       Senate.

20       Of the three members appointed under clause (i) of this  
21       subparagraph, not more than two shall be affiliated with  
22       the same political party. Of the three members appointed  
23       under clause (ii) of this subparagraph, not more than two  
24       shall be affiliated with the same political party. Of the three  
25       members not appointed under such clauses of this sub-

1 paragraph, not more than two shall be affiliated with the  
2 same political party. A vacancy in the Commission shall be  
3 filled in the manner in which the original appointment was  
4 made. All members of the Commission must be citizens of  
5 the United States.

6 “(B) (i) Of the members first appointed—

7 “(I) one recommended by the Speaker of the  
8 House, one recommended by the President pro tempore  
9 of the Senate, and one chosen by the President shall be  
10 appointed for a term of three years;

11 “(II) one recommended by the Speaker of the  
12 House, one recommended by the President pro tempore  
13 of the Senate, and one chosen by the President shall be  
14 appointed for a term of five years; and

15 “(III) one recommended by the Speaker of the  
16 House, one recommended by the President pro tempore  
17 of the Senate, and one chosen by the President shall be  
18 appointed for a term of seven years.

19 “(ii) Any member appointed to fill a vacancy occurring  
20 prior to the expiration of the term for which his predecessor  
21 was appointed shall be appointed only for the remainder of  
22 such term. A member may not serve more than one term on  
23 the Commission, except that a member may serve after the  
24 expiration of this term until his successor has taken office.

25 “(C) No member of the Commission shall actively en-

1 gage in any business, vocation, or employment other than  
2 that of serving as a member of the Commission.

3 “(3) (A) The Commission shall elect a Chairman and a  
4 Vice Chairman from among its members for a term of two  
5 years. The Chairman and the Vice Chairman shall not be  
6 affiliated with the same political party. The Vice Chairman  
7 shall act as Chairman in the absence or disability of the  
8 Chairman, or in the event of a vacancy in that office.

9 “(B) A vacancy in the Commission shall not impair  
10 the right of the remaining members to exercise all the powers  
11 of the Commission and six members thereof shall constitute  
12 a quorum. The Commission shall meet at the call of the  
13 Chairman or any six of its members.

14 “(C) The Commission shall have an official seal which  
15 shall be judicially noticed.

16 “(D) The principal office of the Commission shall be  
17 in or near the District of Columbia.

18 “(4) (A) Members of the Commission (including the  
19 Chairman and Vice Chairman) shall each be paid at the  
20 annual rate of basic pay in effect for level II of the Execu-  
21 tive Schedule of section 5315 of title 5, United States Code.

22 “(B) (i) The Commission shall appoint an Executive  
23 Secretary who shall be paid at a rate not to exceed the rate  
24 of basic pay in effect for level IV of the Executive Schedule  
25 of section 5315 of title 5, United States Code. He shall serve



1 at the pleasure of the Commission and shall be responsible  
2 for the administrative operations of the Commission. He  
3 shall also perform such other duties as may be delegated or  
4 assigned to him from time to time by regulations or orders  
5 of the Commission.

6 “(ii) The Commission shall appoint a General Counsel  
7 who shall be the chief legal officer of the Commission and  
8 who shall serve at the pleasure of the Commission. The  
9 Commission shall also appoint and fix the compensation of  
10 such additional personnel as may be necessary to fulfill the  
11 duties of the Commission in accordance with the provisions  
12 of title 5, United States Code. The Commission may also  
13 obtain the services of experts and consultants in accordance  
14 with section 3109 of title 5, United States Code.

15 “(C) The Commission may use the United States mails  
16 in the same manner and upon the same conditions as other  
17 agencies.

18 “(D) The Administrator of General Services shall pro-  
19 vide to the Commission on a reimbursable basis such admin-  
20 istrative support services as the Commission may request.

21 “(5) (A) The Commission shall prescribe such regula-  
22 tions as it considers necessary or appropriate to effectuate  
23 the provisions of subsections (d) through (g) of this sec-  
24 tion including such regulations as are described in subsection

1 (d) (5) (B), subsection (d) (5) (C), subsection (e) (5)  
2 (B), and subsection (g) (6).

3 “(B) The Commission shall prescribe standards and  
4 procedures concerning the handling of official information  
5 which is classified in the interest of national defense which  
6 shall be applied uniformly by the agencies concerned (in-  
7 cluding the Commission) and shall include, but not be  
8 limited to, the following—

9 “(i) assuring that (1) knowledge and possession  
10 of such information shall be limited to individuals who  
11 are trustworthy and whose official duties require such  
12 knowledge or possession, that (2) such information shall  
13 not be disseminated outside of the originating or con-  
14 trolling agency except under such conditions and by  
15 such methods as are authorized by the President or the  
16 head of the disseminating agency, and that (3) no in-  
17 dividual may withhold or authorize withholding such  
18 information from Congress;

19 “(ii) assuring that such information shall be ap-  
20 propriately and conspicuously marked or otherwise  
21 identified in order to show its category of classification;

22 “(iii) assuring that such information shall be marked  
23 in order to identify the agency which classified it, the  
24 date of its preparation and classification (including the  
25 date of its subsequent downgrading and declassification),

1       and the name and title of the highest ranking person  
2       authorizing its classification (and subsequent downgrad-  
3       ing and declassification) ;

4           “(iv) assuring that such information shall be used,  
5       possessed, transmitted, and stored only under conditions  
6       which will prevent dissemination to or access by un-  
7       authorized persons; and

8           “(v) assuring that appropriate accountability rec-  
9       ords shall be established and maintained with respect  
10      to such information.

11      “(6) (A) The Commission may for the purpose of  
12      carrying out its duties under subsections (d) through (g)  
13      hold such hearings, sit and act at such times and places, take  
14      such testimony, and receive such evidence, as the Commis-  
15      sion may deem advisable. The Commission may administer  
16      oaths or affirmations to witnesses appearing before it.

17      “(B) The Commission may secure directly from any  
18      agency information necessary to enable it to carry out its  
19      duties under subsections (d) through (g). Upon request of  
20      the Chairman or Vice Chairman of the Commission, the head  
21      of such agency shall furnish such information to the Com-  
22      mission.

23      “(C) (i) The Commission shall have the power to issue  
24      subpenas requiring the attendance and testimony of wit-  
25      nesses and the production of any evidence that relates to

1 any matter under investigation by the Commission. Such  
2 attendance of witnesses and the production of such evidence  
3 may be required from any place within the United States at  
4 any designated place of hearing within the United States.

5 “(ii) If a person issued a subpoena under clause (i)  
6 refuses to obey such subpoena or is guilty of contumacy, any  
7 court of the United States within the judicial district within  
8 which the hearing is conducted or within the judicial district  
9 within which such person is found or resides or transacts  
10 business may (upon application by the Commission) order  
11 such person to appear before the Commission to produce  
12 evidence or to give testimony touching the matter under in-  
13 vestigation. Any failure to obey such order of the court may  
14 be punished by such court as a contempt thereof.

15 “(iii) The subpoenas of the Commission shall be served  
16 in the manner provided for subpoenas issued by a United  
17 States district court under the Federal Rules of Civil Proce-  
18 dure for the United States district courts.

19 “(iv) All process of any court to which application  
20 may be made under this section may be served in the judi-  
21 cial district wherein the person required to be served resides  
22 or may be found.

23 “(D) The Commission shall carry out its functions  
24 with respect to the downgrading and declassification of offi-

1 cial information as described in subsection (e) (4) and (e)  
2 (5) (B).

3 “(E) The Commission may issue decisions, orders, and  
4 directives, and distribute reports, administrative memoran-  
5 dums, and other information in order to assure that the pro-  
6 visions of subsections (d) through (g) are carried out.

7 “(F) The Commission shall publish annual reports of  
8 its activities and shall make available for public inspection  
9 at reasonable times in its office a record of its proceedings  
10 and hearings. However, the Commission shall not make  
11 public any classified information prior to its declassification.

12 “(G) The Commission shall conduct a thorough and  
13 continuing investigation and appraisal of the policies, stand-  
14 ards, and operations of agencies classifying information,  
15 in the interest of national defense, under subsection (d).

16 “(H) The Commission shall investigate, upon the vote  
17 of at least three of its members, inquiries initiated by private  
18 citizens, officers, or employees of the United States, or any  
19 other person concerning any allegation of improper classi-  
20 fication of official information within the purview of sub-  
21 section (d) or (e) or concerning any allegation of the  
22 failure of any agency, or of any officer or employee thereof,  
23 to comply with the provisions of subsection (d) or (e), or  
24 any regulation prescribed by the Commission under para-

1 graph (5) (A) of this subsection, or any standards or pro-  
2 cedures prescribed by the Commission under paragraph (5)  
3 (B) of this subsection, or any decisions, orders, or directives  
4 issued by the Commission under subparagraph (G) of this  
5 paragraph. The Commission shall have a report published  
6 which describes the results of each investigation. The Com-  
7 mission shall, when appropriate, refer such matters to the  
8 Attorney General of the United States.

9 “(I) The Commission shall, pursuant to the provisions  
10 of subsection (g), furnish to Congress, committees of Con-  
11 gress, and the Comptroller General of the United States,  
12 upon request, certain classified information necessary for  
13 Congress to discharge fully and properly all of its constitu-  
14 tional responsibilities.

15 “(g) (1) (A) The Commission shall promptly consider  
16 any written request transmitted to it for the issuance of an  
17 order directing any agency to transmit official information  
18 held by such agency which is classified to—

19 “(i) either House of Congress, if such request is  
20 made upon the direction of a majority vote of the Mem-  
21 bers of such House;

22 “(ii) any committee of Congress, if such request  
23 is made upon the direction of a majority vote of the  
24 members of such committee and the subject matter of

23

1 the information requested relates to the jurisdiction of  
2 such committee; or

3 “(iii) the Comptroller General of the United States,  
4 if the request is made by him.

5 “(B) For the purposes of this section, the term ‘com-  
6 mittee of Congress’ means any committee of the Senate or  
7 House of Representatives or any subcommittee of any such  
8 committee or any joint committee of Congress or any sub-  
9 committee of any such joint committee.

10 “(2) Any request transmitted to the Commission under  
11 paragraph (1) (A) shall state with reasonable particularity  
12 the information or category of information requested and  
13 include a description of any efforts made to obtain access to  
14 such information, identifying the agency to which such re-  
15 quest was made, the date of such request, and a copy of all  
16 correspondence with any such agency with respect to such  
17 request.

18 “(3) When the Commission receives any request under  
19 paragraph (1) (A), it shall immediately inform, in writ-  
20 ing, the head of the appropriate agency and the President  
21 of such request, including a description of the information  
22 requested.

23 “(4) (A) The agency which is informed under para-  
24 graph (3) of such request shall transmit the information

1 requested to the Commission within three calendar working  
2 days of the date upon which such agency is so informed by  
3 the Commission. The head of such agency shall transmit  
4 to the Commission, along with such requested information,  
5 a letter containing a statement setting forth the recommen-  
6 dations of the agency as to whether such information should  
7 be made available by the Commission to the person request-  
8 ing it under paragraph (1) (A).

9 “(B) If the agency concerned fails to transmit such  
10 requested information to the Commission pursuant to the  
11 provisions of subparagraph (A), the Commission shall im-  
12 mediately issue a subpoena under subsection (f) (6) (C) (i)  
13 requiring the production of such information.

14 “(5) (A) If the agency concerned transmits such in-  
15 formation to the Commission pursuant to paragraph (4)  
16 (A) and the recommendation of such agency is to release  
17 such information to the person requesting it, then the Com-  
18 mission shall transmit such information to such person.

19 “(B) If, however, the recommendation of such agency  
20 is not to release such information to the person requesting  
21 it, the agency shall transmit to the Commission a detailed  
22 justification in writing setting forth the specific reasons  
23 for its recommendation. The Commission shall conduct an  
24 investigation to determine whether such information shall  
25 be transmitted to the person requesting it. In making such



1 determination, the Commission shall weigh the constitutional  
2 rights and powers of the parties concerned, including (i) the  
3 extent to which such information is necessary to Congress  
4 so that Congress may fully and properly discharge its con-  
5 stitutional responsibilities, and (ii) the extent to which the  
6 disclosure of such information to Congress would be con-  
7 trary to the public interest or would seriously endanger the  
8 national defense of the United States. The Commission shall  
9 publish its determinations in the Federal Register. The pro-  
10 ceedings of the Commission shall be recorded.

11 “(6) (A) The Commission shall prescribe regulations  
12 to govern its proceedings under paragraph (5) of this sub-  
13 section.

14 “(B) In any case within the purview of paragraph (5)  
15 (B), the Commission shall hold a hearing at which a party  
16 is entitled to present its case or defense by oral or documen-  
17 tary evidence, to submit rebuttal evidence, and to conduct  
18 such cross-examination as may be required for a full and  
19 true disclosure of the facts.

20 “(C) The Commission shall meet immediately after  
21 the conclusion of the hearing to begin deliberations. The  
22 Commission shall render its decision in writing to each party  
23 within three calendar working days after the conclusion of  
24 the hearing. Such decision shall set forth in detail the reasons  
25 for the determination of the Commission.

1       “(7) (A) In carrying out the provisions of paragraph  
2   (5), the Commisison is authorized to enter an order in each  
3   case either granting or denying the request. The Commis-  
4   sion shall prescribe such terms and conditions as it deems  
5   necessary to protect the security of the information con-  
6   cerned, including but not limited to, requiring that the per-  
7   son requesting such information or his agent—

8       “ (i) take adequate measures to guard the physical  
9       security of the information received;

10       “(ii) assure that access to the information be lim-  
11       ited to Members of Congress whose responsibilities  
12       require access to such information, or to appropriate  
13       staff members of either House of Congress, or of any  
14       committee of Congress, or to the Comptroller General  
15       of the United States or any employee of the General  
16       Accounting Office who possesses proper security clear-  
17       ance; and

18       “(iii) take adequate measures to assure that all  
19       discussions with respect to such information shall take  
20       place in executive session of a committee of Congress  
21       and closed sessions of either the Senate or the House  
22       of Representatives, as provided in the rules of each  
23       such body.

24       “(8) (A) There is vested in the United States Court  
25       of Appeals for the District of Columbia exclusive original

1 jurisdiction to review any final decision of the Commission  
2 under paragraph (6) upon complaint filed by a party to  
3 the proceeding at which such decision was made within  
4 fifteen calendar days of the date of publication of such deci-  
5 sion by the Commission in the Federal Register pursuant  
6 to paragraph (5) (B). The decision of the Commission shall  
7 be upheld if there is substantial evidence on the record  
8 to sustain that decision. Such case shall be immediately con-  
9 sidered and shall have precedence over all other cases pend-  
10 ing before such court.

11 “(B) There is vested appellate jurisdiction in the Su-  
12 preme Court of the United States to review by appeal as a  
13 matter of right any decision made by the United States Court  
14 of Appeals for the District of Columbia pursuant to this para-  
15 graph. The Supreme Court shall act promptly in considering  
16 such appeal and rendering its judgment thereon.

17 “(C) The judicial review provided for by this paragraph  
18 shall be the exclusive mode of judicial review.”

19 SEC. 4. It is the sense of the Congress that the Presi-  
20 dent, in conformity with article II, section 3, and article I,  
21 section 8 of the Constitution of the United States, shall keep  
22 Congress fully and currently informed with respect to all of  
23 the activities of agencies covered under this Act.

24 SEC. 5. There are authorized to be appropriated such

1 sums as may be necessary to carry out the provisions of  
2 this Act.

3 SEC. 6. (a) Except as provided by subsection (b), the  
4 foregoing provisions of this Act shall take effect at the be-  
5 ginning of the sixth month that commences after the date of  
6 its enactment.

7 (b) Section 552 (f) (1) through (5) and (g) (6) (A)  
8 as added by section 3 of this Act and section 5 of this Act  
9 (to the extent necessary) shall take effect upon the enact-  
10 ment of this Act.

93d CONGRESS  
1st Session

# H. R. 12004

## A BILL

To amend section 552 of title 5 of the United States Code (known as the Freedom of Information Act) to provide for the classification and declassification of official information in the interest of national defense.

By Mr. MOHRHEAD of Pennsylvania, Mr. ARZUFF, Mr. ALEXANDER, Mr. BADILIO, Mr. BINGHAM, Mr. BROWN of California, Mrs. COLLINS of Illinois, Mr. COTTELL, Mr. DELL, Mr. FASCELL, Mr. HARRINGTON, Mr. HICKS, Mr. HOWARD, Mr. KERRY, Mr. LEEGETT, Mr. MATHIAS, Mr. MAZZOLI, Mrs. MINK, Mr. MOSS, Mr. REES, Mr. ROSENTHAL, Mrs. SCHROEDER, Mr. STUBBINS, Mr. THOMPSON of New Jersey, and Mr. TROTT.

February 15, 1973

Referred to the Committee on Government Operations